

FILED

FEB 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIVE ECOSYSTEMS COUNCIL; et
al.,

Plaintiffs - Appellants,

v.

ABIGAIL KIMBELL, in her official
capacity as Northern Regional Forester; et
al.,

Defendants - Appellees,

BUTTE-SILVER BOW, City and County
of, a municipal corporation and political
subdivision of the State of Montana,

Defendant-Intervenor - Appellee.

No. 05-36036

D.C. No. CV-05-00110-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted February 13, 2006^{**}

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

This appeal from the district court's September 29, 2005, order denying a motion for a preliminary injunction comes to us under 28 U.S.C. § 1292(a)(1) and 9th Cir. Rule 3-3.

We remand the case for the district court to reconsider, in light of this court's December 8, 2005, decision in *Ecology Center, Inc. v. Austin*, 430 F.3d 1057 (9th Cir. 2005), whether the Forest Service adequately explained its assessment of the Basin Creek Hazard Fuels Reduction Project's impact on the viability of the black-backed woodpecker. *See id.*, at 1067-68.

We express no opinion regarding whether *Ecology Center* warrants a different result. This panel will not retain jurisdiction over any subsequent appeal in this case.

REMANDED.